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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

V.

**TWO CONDOMINIUMS LOCATED AT 465
OCEAN DRIVE, UNITS 315 AND 316, MIAMI
BEACH, FLORIDA 33139**

Defendants.

Case No. 21-CV-04060-CRB

**REPLY IN SUPPORT OF MOTION
TO DISMISS THE UNITED STATES'
VERIFIED COMPLAINT FOR CIVIL
FORFEITURE IN REM**

Courtroom: SF Courtroom 6 - 17th Floor
(Zoom)

Date: September 2, 2021

Time: 10:00 AM

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1 **I. INTRODUCTION**

2 The government seeks the drastic remedy of forfeiting two condominiums based on a threadbare
 3 and conclusory Complaint for Civil Forfeiture *In Rem* that fails to allege the required legal elements.
 4 When Claimants Dr. Zachary Apte and Dr. Jessica Richman pointed out the numerous flaws in the
 5 Complaint, *see* Dkt. 25 (“Motion” or “Mot.”), the government responded not with citations to actual
 6 allegations, but by imploring the Court to invent and assume a factual basis not pled and by otherwise
 7 ignoring many of the issues raised by the Motion to Dismiss. *See, e.g.*, Dkt. 28 (“Opposition” or
 8 “Opp.”) at 9. The government fails entirely to address the stunning lack of detail supporting its
 9 conclusory allegations of securities fraud or wire fraud or explain how Dr. Apte or Dr. Richman could
 10 have received proceeds from *potential* investors, who never invested any money in uBiome at all.
 11 *Compare id.*, with Mot. at 7-8. The government similarly fails to address how Dr. Apte or Dr. Richman
 12 could have received proceeds from an alleged healthcare fraud *before* uBiome is alleged to have
 13 received any profits from insurers. Most tellingly, the government fails to identify any *specific factual*
 14 *allegations* that would tie its unsubstantiated claims of fraud to the purchase of the properties the
 15 government now seeks to forfeit. *See generally* Mot.

16 Instead of addressing Dr. Apte’s and Dr. Richman’s arguments or identifying specific facts in
 17 support of its claims, the government opposes the Motion by characterizing it as a “thinly veiled effort to
 18 elicit discovery” that “would require the government to provide discovery far beyond what is required at
 19 this juncture.” Opp. at 1. Contrary to the government’s illogical claim, the purpose of Dr. Apte’s and
 20 Dr. Richman’s motion is to dismiss the government’s Complaint—and thus deprive themselves of
 21 discovery—because the government’s Complaint does not allege viable claims of specified unlawful
 22 activity, let alone a connection between the government’s unsubstantiated allegations of fraud and the
 23 property it seeks to forfeit. Supplemental Rule G requires the government to plead a valid cause of
 24 action before claimants are compelled to participate in rigorous discovery. Because the Complaint
 25 completely fails to meet the standard of Rule G, it must be dismissed.

1 **II. LEGAL STANDARD**

2 Despite the government’s efforts to minimize an indisputably heightened pleading standard, the
 3 parties agree on the applicable rule. In addition to satisfying the requirements set forth in Federal Rule
 4 of Civil Procedure 8(a), a complaint for civil forfeiture *in rem* must satisfy the Supplemental Rules for
 5 Admiralty or Maritime Claims and Asset Forfeiture Actions. *See United States v. Aguilar*, 782 F.3d
 6 1101, 1108 (9th Cir. 2015). Specifically, under Supplemental Rule G(2)(f), a complaint must “state
 7 sufficiently detailed facts to support a reasonable belief that the government will be able to meet its
 8 burden of proof at trial.” *Id.* “[T]his is a higher standard than ‘notice pleading,’” *id.*, and requires the
 9 government to “show probable cause that the assets in question are traceable to a violation of an Act of
 10 Congress,” *United States v. \$6,190.00 in U.S. Currency*, 581 F.3d 881, 885 (9th Cir. 2009).¹

11 **III. DISCUSSION**

12 As Dr. Apté and Dr. Richman demonstrated in their Motion, the Complaint fails to plead facts
 13 alleging violations of predicate “specified unlawful activity” (“SUA”), to allege a connection between
 14 the government’s broad allegations of fraud and the purchases of the adjoining condominiums the
 15 government seeks to forfeit (the “Florida Condominiums”), or to plead facts that could substantiate the
 16 assertion that the Florida Condominiums were an instrumentality of money laundering. The Opposition
 17 does not provide any basis to conclude otherwise.²

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23 ¹ Importantly, in civil forfeiture cases, a district court’s subject matter jurisdiction is based on 28 U.S.C.
 24 § 1335(a). It is a jurisdictional requirement under § 1335 that the government show “probable cause that
 25 the assets in question are traceable to a violation of an Act of Congress.” *\$6,190.00 in U.S. Currency*,
 26 581 F.3d at 885.

27 ² As an initial matter, the Opposition cites to the indictment filed in *United States v. Zachary Apté and*
 28 *Jessica Richman*, Case No. 21-cr-0116 (N.D. Cal. Mar. 18, 2021). *See* Opp. at 1, 3. While the Court
 may take judicial notice of the fact that the indictment was *filed*, it cannot take notice of the *facts alleged*
 in the indictment when resolving a motion to dismiss in a separate case. *See Khoja v. Orexigen*
Therapeutics, Inc., 899 F.3d 988, 1000 (9th Cir. 2018) (“Judicial notice under Rule 201 permits a court
 to notice an adjudicative fact if it is ‘not subject to reasonable dispute.’”) (citing Fed. R. Evid. 201(b)).

A. The Complaint Fails to Allege Adequately That Dr. Apté or Dr. Richman Engaged in or Received Proceeds from Specified Unlawful Activity.

1. Healthcare Fraud

The Complaint specifically alleges that uBiome’s alleged healthcare fraud scheme was designed to obtain money *for uBiome*, saying nothing about a transfer of funds to Dr. Apte or Dr. Richman. Dkt. 1 (“Compl.”) ¶¶ 12, 18-19. In its Opposition, the government cites a single paragraph of the Complaint—Paragraph 17—to argue that the Complaint sufficiently alleges that Dr. Apte and Dr. Richman received proceeds from that alleged healthcare fraud scheme. *See* Opp. at 8 (citing Compl. ¶ 17). That paragraph, however, does not support the government’s argument:

uBiome's Series B investors transferred approximately \$15 million into uBiome's business accounts in 2016 in exchange for uBiome stock and Founders Shares. Near the end of 2016, APTE and RICHMAN began funneling funds from the uBiome account to their personal accounts, including approximately \$1.2 million into accounts controlled by APTE, and approximately \$600,000 into accounts controlled by RICHMAN. These include at \$595,000 transfer to Larraín Vial S.A. Correcora De Bolsa, a Chilean bank, for the benefit of APTE.

Compl. ¶ 17. This paragraph does not allege that Dr. Apte or Dr. Richman received proceeds from healthcare fraud—it says nothing about healthcare or insurance whatsoever.

But even assuming that the Complaint adequately connected the deposit of some funds with the withdrawal of other funds, which it does not as further explained in Section III.B., the allegations of Paragraph 17 could not possibly relate to the alleged healthcare fraud scheme. Paragraph 17 of the Complaint alleges that the transfer of the “approximately \$1.2 million” to Dr. Apte and Dr. Richman occurred “[n]ear the end of 2016.” *Id.* (emphasis added). The Complaint subsequently alleges that “beginning in 2017, uBiome began accruing profits from health care payers” through an alleged healthcare fraud scheme. *Id.* ¶ 18 (emphasis added). Thus, according to the government’s own allegations, any transfers from uBiome’s account cannot constitute proceeds of any alleged healthcare fraud scheme that did not result in uBiome accruing profits until 2017—*after* Dr. Apte and Dr. Richman allegedly received funds from uBiome in 2016.

Notably, the remainder of the Complaint fails to allege any connection between profits or payments uBiome received from health insurance providers and Dr. Apte or Dr. Richman. Outside of

1 the single allegation above, which can only reasonably relate to an alleged predicate SUA of securities
 2 fraud, there is no allegation connecting Dr. Apte or Dr. Richman to the money that uBiome received.
 3 Accordingly, those alleged violations cannot serve as a predicate for the forfeiture of the Florida
 4 Condominiums.³

5 **2. Securities Fraud**

6 The government argues that it has sufficiently pled the use of an instrumentality of interstate
 7 commerce in furtherance of securities fraud and that the Complaint's allegations of misrepresentation
 8 are sufficiently specific. Opp. at 8-11. The government is plainly wrong on both counts.

9 The government argues that the Complaint alleges the use of a means or instrumentality of
 10 interstate commerce or the mails because it "integrates instrumentalities of interstate commerce in its
 11 discussion of securities fraud activity." Opp. at 9. Specifically, the government points to allegations
 12 that Dr. Apte and Dr. Richman engaged in "transfers between and among financial accounts involving
 13 wrongfully obtained investments from investors." *Id.* (citing Compl. ¶¶ 17-19).

14 To plead securities fraud, however, the alleged instrumentality of interstate commerce must be
 15 "use[d] . . . to employ" the fraudulent conduct, 15 U.S.C. § 78j, that is, "in furtherance of the alleged
 16 fraud," *Hilton v. Mumaw*, 522 F.2d 588, 602 (9th Cir. 1975). The Complaint, however, pleads no facts
 17 involving the use of instrumentalities of interstate commerce to further alleged misstatements or
 18 omissions made to investors. Rather, the Complaint references the transfer of funds only *after* the
 19 allegedly fraudulent conduct occurred.

20 The cases the government cites, in a futile effort to salvage this fatal flaw in its pleading, are
 21 plainly inapposite. Each case addressed allegations of money laundering, not securities fraud. *See* Opp.
 22 at 9. Unlike securities fraud, the money laundering offenses involved in those cases required the use of
 23 an instrumentality, *e.g.*, the transfer of money, *after* some underlying criminal conduct. *See United*
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25 ³ The government asserts that Dr. Apte and Dr. Richman "assume[] that the Verified Complaint
 26 adequately alleges" a healthcare fraud scheme. Opp. at 8. Contrary to the government's baseless
 27 argument, the Motion argued that the healthcare fraud allegations were a mere "summary recitation" that
 "parrots the legal elements" and were legally unsupportable. Mot. at 5-6 & n.4.

1 *States v. Zinnel*, 725 F. App'x 453, 460 (9th Cir. 2018) (money laundering); *United States v. Owens*, 159
 2 F.3d 221, 226 (6th Cir. 1998) (same).⁴ This critical distinction between the two offenses demonstrates
 3 the inapplicability of the cases cited by the government. Simply put, the Complaint fails to allege the
 4 use of an instrumentality of interstate commerce “to employ” the allegedly fraudulent conduct—a
 5 deficiency fatal to the claim.

6 The Complaint also fails to allege actual misrepresentations that could substantiate a securities
 7 fraud claim. Likely recognizing the inadequacy of its vague assertions, the government argues that the
 8 sweeping and unsubstantiated allegations of misrepresentations and omissions at the heart of the
 9 Complaint’s securities fraud theory are, when read as a whole, sufficient to allow the Claimants to
 10 commence a meaningful investigation. Opp. at 9. Tellingly, the government provides no citation to
 11 allegations in the Complaint that plead the elements of a securities fraud claim. Instead, the government
 12 implores the Court to see an expansive picture of fraud from a Complaint that does not land a single
 13 brushstroke against the canvas. Like the Complaint, the government’s arguments do not identify a
 14 single false or misleading statement that Dr. Apte or Dr. Richman made, or identify a single investor to
 15 whom any such statements were made. *See* Opp. at 9-10; Compl. at ¶¶ 14-16.

16 The government nonetheless asserts that Paragraphs 13 through 15 of the Complaint plead the
 17 facts necessary to support its conclusion that Dr. Apte or Dr. Richman made misleading statements or
 18 omissions to investors. Opp. at 9-10. Yet, no such facts are pled in the Complaint (in Paragraphs 13
 19 through 15 or elsewhere), and the government cannot plead them for the first time in its Opposition. For
 20 example, the government’s Opposition confusingly argues that the Complaint alleges in Paragraphs 13
 21 and 14 that uBiome’s “business activities” were a part of its “healthcare fraud scheme” and were

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 24 ⁴ The government also cites to *Owens* for the proposition that “using a bank that engages in activities
 25 affecting interstate commerce in any manner is sufficient for purposes of establishing that a transaction
 26 affected interstate commerce.” Opp. at 9. *Owens* involved a Commerce Clause challenge to gambling
 27 and money laundering statutes. Whether banks engage in interstate commerce is irrelevant where, as
 28 here, the Complaint fails to allege any direct or indirect use of interstate commerce to further the alleged
 29 fraud. *Hilton*, 522 F.2d at 602.

1 communicated to investors. Opp. at 9-10.⁵ However, Paragraphs 13 and 14 do not actually plead facts
 2 regarding what was communicated to investors. Although Paragraph 15 makes the conclusory
 3 allegation that Dr. Apte and Dr. Richman misrepresented “the success of uBiome’s business model in
 4 terms of revenues and reimbursement rates” there are no facts pled to suggest what was said to investors,
 5 how it was communicated, when it was said, why it was a misstatement, why it was material, or even to
 6 whom it was communicated. *See Compl. ¶ 15.* Similarly, the Government offers no rebuttal to explain
 7 how Dr. Apte or Dr. Richman could have used “proceeds” that were never received from “potential
 8 investors” who declined to invest in uBiome to purchase the Florida Condominiums. *See Mot.* at 7-8.
 9 Dr. Apte and Dr. Richman are thus left to guess at the government’s potential theories and the identities
 10 of any alleged victims of these unspecified statements, and therefore the Complaint fails the standard
 11 required by Rule G.

12 The cases the government attempts to distinguish and recast actually affirm that the Complaint
 13 fails to provide sufficiently detailed facts to survive the instant Motion. For example, the government
 14 argues that *United States v. One White Crystal Covered Bad Tour Glove and Other Michael Jackson*
 15 *Memorabilia* supports not dismissing the Complaint. 2012 WL 8455336, at *3 (C.D. Cal. Apr. 12,
 16 2012) (hereinafter “*Bad Tour Glove*”). However, the *Bad Tour Glove* court dismissed a forfeiture
 17 complaint which “clearly fail[ed] to meet the heightened pleading requirements” for two primary
 18 reasons. *Id.* First, the complaint did not plead facts describing “specific instances” of the alleged
 19 extortion, or “when the extortion allegedly occurred,” or who specifically were the victims. *Id.* The
 20 court came to this conclusion despite the complaint generally describing the alleged scheme’s victims,
 21 *i.e.* “a businessman . . . who owned a construction company” and a “major international civil
 22 engineering firm.” *Id.* Second, the court found that the complaint “crucially” failed to allege facts about
 23 the claimant’s role in the scheme, and instead lumped the claimant’s conduct with that of a group called
 24 the “Inner Circle.” *Id.* Notably, in another case relied upon by the government, *United States v. Sum of*
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26 ⁵ On its face, the quoted sentence from the Opposition states that uBiome’s allegedly fraudulent business
 27 activities, as described in Paragraph 15 of the Complaint, were, in fact, “communicated to investors.”
 28 Opp. at 9-10. This is further support for the conclusion that the Complaint fails to allege a securities
 fraud claim.

\$70,990,605, the court denied a motion to dismiss a forfeiture based on wire fraud in part because the complaint “specifically identified the victim of the scheme . . . and which members of the conspiracy were responsible for which acts.” 4 F. Supp. 3d 189, 200 (D.D.C. 2014).

The Complaint here suffers the same fatal defects as the complaint in *Bad Tour Glove* and is distinguishable from the complaint in *Sum of \$70,990,605*. The Complaint does not plead facts regarding any specific misstatements or omissions or any investors to whom those misstatements were made. In this respect, the Complaint here is even less specific than the complaint in *Bad Tour Glove*, which at least identified victims in general terms.

Moreover, the Complaint lumps Dr. Apte and Dr. Richman together, making them the “Inner Circle” of uBiome, and makes no distinction in the conduct attributed to either of the two individuals. Taken at face value, the government must be alleging that every statement or omission made by one was made by the other at the same time and to the same audience and with the same mental state. If the government intends to suggest that certain statements were made by one of either Dr. Apte or Dr. Richman, one cannot tell from this Complaint.

In short, the Complaint neither identifies any specific victim of the alleged scheme, nor does it state which members of the alleged scheme, Dr. Apte or Dr. Richman, were responsible for which acts. For that reason, the alleged securities fraud cannot serve as a predicate SUA for the forfeiture of the Florida Condominiums.

3. Wire Fraud

The government argues that the Complaint sufficiently alleges “several iterations” of wire fraud because the “wire fraud scheme encompasses the healthcare and securities fraud schemes.” Opp. at 12.⁶ Implicit in this argument is the government’s recognition that the Complaint does not actually provide

⁶ The government’s additional “argument” that the wire fraud scheme “includes the purchase of [Florida Condominiums] for [Claimants] personal benefit at the expense of healthcare benefit programs and investors,” is yet another a vague and unsubstantiated conclusion that finds no support in the Complaint. Opp. at 12. The government does not point to any allegations in the Complaint or explain this “argument;” it is thus impossible for Claimants to respond to such unsubstantiated and vague allegations made for the first time in a brief. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (Plaintiff must provide “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do”).

any independent allegations as to wire fraud. Indeed, in its Opposition, the government relies on the statutory language of 18 U.S.C. § 1343 without any discussion of any factual allegations specific to wire fraud in this action. *Id.*

Significantly, because the government fails to allege sufficiently the predicate SUAs of securities fraud or healthcare fraud, the Complaint necessarily fails to allege wire fraud. As explained above, the Complaint omits necessary and specific allegations that Dr. Apte or Dr. Richman engaged in the SUA of securities fraud or that any transfer of alleged healthcare fraud proceeds to Dr. Apte or Dr. Richman occurred. The government therefore cannot rely on these inadequately pled fraud schemes to serve as the predicate SUA of wire fraud. Because the Complaint fails to provide any independent allegations as to wire fraud and pleads no specific facts about the alleged wire fraud scheme, wire fraud cannot serve as a basis for forfeiture.

Finally, despite the government's assertion that the Complaint alleges "several iterations" of wire fraud without identifying a single piece of evidence, even if the Complaint could be read to plead a viable wire fraud scheme, it does so too vaguely to satisfy the heightened pleading standards of Rule G. As the Ninth Circuit held in *Aguilar*, to satisfy Rule G's heightened pleading standard, a forfeiture complaint must allege enough facts for claimants to understand the government's forfeiture theories, undertake an adequate investigation, and draft a response to the allegations. 782 F.3d at 1108-09; *United States v. Mondragon*, 313 F.3d 862, 864 (4th Cir. 2002). A complaint that requires claimants to guess upon which of the various unidentified "iterations" of a possible scheme the government will rely fails to meet this standard.

B. The Complaint Fails to Allege the Florida Condominiums Were Acquired with the Proceeds of Fraud.

The government argues that the Complaint provides enough tracing from SUA proceeds to the Florida Condominiums to survive a motion to dismiss. Opp. at 13. The government's argument asks the Court to substitute a general description of unassociated financial transactions for an actual tracing of proceeds from one of the alleged SUAs to the Florida Condominiums. While the Complaint describes a number of transactions, the Complaint *does not plead a single fact* tying proceeds of an SUA to the purchase of either of the Florida Condominiums. The government claims that the Complaint

1 “explains how the proceeds” of the alleged schemes “culminated in the purchase of the Defendant
 2 Property, via the purchase and sale of a real property in Camas, Washington.” *Id.* (citing Compl. ¶¶ 17-
 3 23). But the government’s argument merely doubles down by stating in a conclusory fashion,
 4 unsupported by facts pled in the Complaint, that the funds used to acquire the Camas, Washington
 5 property (the “Washington House”) “were derived, in substantial part” from SUA proceeds. *Id.* (quoting
 6 Compl. ¶ 23). The Complaint alleges no facts to support that supposed conclusion.

7 The problem is not, as the government argues, that the “Complaint does not provide all of the
 8 tracing necessary.” Opp. at 13. The problem is that the Complaint provides *none* of the necessary
 9 tracing. There are *no facts* alleged connecting the proceeds of the supposed SUA to the Florida
 10 Condominiums. The Ninth Circuit has rejected the argument that because claimants have allegedly
 11 received proceeds of an SUA, their property is forfeitable even if it is not traced to those proceeds.
 12 *United States v. Thompson*, 990 F.3d 680, 686 (9th Cir. 2021) (“[O]nly property that is traceable to the
 13 proceeds is forfeitable, not other property that [defendants] may own[.]”). The government must plead
 14 some connection between the proceeds of an SUA and the property to be forfeited.

15 For example, the government claims that Dr. Apte and Dr. Richman received proceeds of
 16 healthcare and securities fraud in 2016, Opp. at 7-8, 13, but this argument fails both on the facts and the
 17 law. The Complaint simply sets forth two allegations: first, that uBiome received \$15 million from
 18 investors in various unspecified business accounts at unspecified times in 2016; and, second, that near
 19 the end of 2016, Dr. Apte and Dr. Richman each received money from an unspecified single uBiome
 20 account, totaling approximately \$1.2 million.⁷ Compl. ¶ 17. The government asks the Court to merely
 21 assume, without pleading a single fact in support, that the money allegedly received from a single
 22 uBiome account at the end of 2016 was the very same money placed in multiple, unspecified uBiome
 23 accounts earlier that year. But even assuming the government was correct that the transactions shared a
 24 common uBiome account (a fact not pled in the Complaint), this would still be insufficient, as the
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26 ⁷ Although the Complaint uses the suggestive word “funnel[]” in a baseless effort to suggest some
 27 unexplained mysterious impropriety, it details no factual allegations to explain why the transfer of
 28 money from a company account to two executive employees was inappropriate or unusual in any way.
 The Complaint also fails to allege that the supposedly “funneled” funds were proceeds of any SUA.

1 government must trace proceeds to specific funds, not accounts. *See United States v. \$448,342.85*, 969
 2 F.2d 474, 476 (7th Cir. 1992) (rejecting the government’s argument that the specified unlawful activity
 3 can be traced to “accounts,” and holding that the activity must be traced to specific funds); *see also*
 4 *United States v. \$814,254.76 in U.S. Currency*, 51 F.3d 207, 209 (9th Cir. 1995) (adopting the reasoning
 5 of *\$448,342.85*, 969 F.2d at 476).

6 The government’s cited cases do not support the conclusion that no tracing at all is required. For
 7 example, the government misleadingly quotes *Aguilar* for the proposition that “tracing is not at issue at
 8 the motion to dismiss stage.” Opp. at 13 (quoting 782 F.3d at 1109). *Aguilar* is inapposite. The issue in
 9 *Aguilar* was whether all, or just a portion, of the funds used to acquire the defendant property were part
 10 of the alleged money laundering. 782 F.3d at 1109. The court held that “arguments that a portion of the
 11 property that the government claims is not subject to forfeiture” were a matter for trial. *Id.* Here, the
 12 issue is instead whether the Complaint traces *any* portion of the Florida Condominiums to proceeds of
 13 SUA. Accordingly, *Aguilar* does not apply.⁸

14 A careful review of the Complaint shows that it fails to trace any proceeds from an SUA to the
 15 Florida Condominiums. The government claims that Dr. Apte and Dr. Richman invested funds derived
 16 from some SUA to purchase their home in Camas, Washington. Notably, the Complaint is devoid of
 17 any factual allegations suggesting that the funds used to purchase or pay off the mortgage on the
 18 Washington House were, in fact, proceeds of an SUA. As argued above, the Complaint does not plead
 19 facts suggesting that the “approximately \$1.2 million” transferred to Dr. Apte’s and Dr. Richman’s
 20 accounts were proceeds of an SUA. *See* Compl. ¶ 17. Even assuming they were (they were not), the
 21 Complaint does not allege any facts to suggest those proceeds were later used to purchase or pay off the
 22 mortgage of the Washington House. At most, the Complaint boils down to two allegations: Dr. Apte
 23 and Dr. Richman received some alleged proceeds in some unspecified personal accounts; and, later, they

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 25 ⁸ The government also cites *United States v. Real Property Located at 5208 Los Franciscos Way*, 385
 26 F.3d 1187, 1193 (9th Cir. 2004) for the proposition that “the government is not required to prove its case
 27 simply to get in the courthouse door.” Opp. at 13. That case addressed an argument that the
 28 government required evidence at the complaint stage, and the claimants apparently did not contest that
 the government’s allegations, if true, would state a claim. *See id.* Although the government need not
 submit evidence to prove its case in the Complaint, it must appropriately plead its case.

1 used other, potentially different, unspecified personal accounts to buy the Washington House. The
 2 Complaint does not allege any connection between the receipt of any proceeds and the subsequent
 3 acquisition of the Washington House.

4 The government's Opposition also does not acknowledge that, as pointed out in the Motion, the
 5 Complaint does not identify which of the two Florida Condominiums was purchased with the proceeds
 6 of the Washington House or why the use of those funds to buy one property would subject the other to
 7 forfeiture. *Compare generally*, Opp., with Mot. at 10. The government's wholly unsupported
 8 declaration that it alleged "ample facts" for Dr. Apte and Dr. Richman "to initiate an investigation" to
 9 determine whether such a connection may exist reflects the insufficiency of the Complaint. Opp. at 13.
 10 It must be dismissed. *See Thompson*, 990 F.3d at 686.

11 **C. The Forfeiture Complaint Fails to Allege Facts That the Florida Condominiums
 12 Were an Instrumentality of Money Laundering.**

13 The government next argues that the Complaint "adequately alleges" that Dr. Apte and Dr.
 14 Richman "engaged in specified unlawful activities giving rise to money laundering, specifically, wire
 15 fraud, healthcare fraud, and securities fraud schemes." Opp. at 14. But allegedly engaging in wire
 16 fraud, healthcare fraud, or securities fraud does not "give rise to money laundering." Money laundering
 17 is a separate offense, with separate elements, and must be pled separately and adequately. "Money
 18 laundering requires proof of three elements: (1) the defendant conducted a financial transaction that 'in
 19 fact involve[d] the proceeds of specified unlawful activity;' (2) the defendant knew that the property
 20 involved was the proceeds of some form of unlawful activity; and (3) the defendant knew that a
 21 transaction he engaged in was for the purpose of concealing or disguising ownership or control of ill-
 22 gotten proceeds." *United States v. One 1997 Mercedes E420*, 175 F.3d 1129, 1131-32 (9th Cir. 1999)
 23 (citing 18 U.S.C. § 1956). The Complaint fails to allege any of these elements.

24 Focusing solely on the concealment element, the government argues that the purpose of
 25 concealment may be inferred from the circumstances surrounding a transaction and the Complaint
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sufficiently alleges the “hallmarks” of money laundering.⁹ Opp. at 15-16. Citing to inapt case law, the government asserts that the required elements of money laundering can be inferred from “funneling of illegal funds through various fictitious business accounts,” “convoluted financial transactions,” or “inter-company transfers with no clear purpose.” *Id.* The Complaint, however, alleges that Dr. Apte and Dr. Richman purchased the Florida Condominiums as “part of a series of real estate transactions” “designed to conceal the illicit nature of funds.” Compl. ¶ 25. The Complaint does not allege any of these other alleged hallmarks of money laundering are associated with the purchase of the Florida Condominiums.¹⁰

The purchases of the Florida Condominiums, the only transactions actually alleged to be connected to money laundering activities in the Complaint, *see* Compl. ¶ 23, bear none of the government’s supposed “hallmarks” that could tend to suggest Dr. Apte or Dr. Richman acted to conceal the nature, source, or location of the funds used to purchase the Florida Condominiums. The Complaint does not allege the properties were acquired through fictitious business accounts or via inter-company transfers. Further, although the Complaint references a “series” of real estate transactions, it pleads facts involving only two separate real estate transactions—one for the Washington House, and one for the Florida Condominiums.¹¹ There is nothing convoluted about selling one home to move to another. Moreover, although the government cites to other accounts from which the balance of funds to purchase the Florida Condominiums was obtained, the government *does not allege* those funds constitute proceeds of specified unlawful activity and thus the source of those funds is immaterial. *See Thompson*, 990 F.3d at 686.¹²

⁹ Because the Complaint fails to allege the substantive healthcare, securities, and wire fraud claims, and the money laundering claims are derivative of those, the money laundering claim also fails on the first and second elements.

¹⁰ To the extent that the government argues in its Opposition that the use of a uBiome account as a “funnel” to personal accounts was further part of alleged money laundering activities, that argument is not asserted in the Complaint and cannot be alleged through its responsive briefing.

¹¹ The Opposition suggests the mere formation and use of a trust was in some way nefarious. Opp. at 16. Certainly the government is not alleging the use of a trust is, in and of itself, a “hallmark” of money laundering.

¹² The government also argues that “[a]ctivity after APTE and RICHMAN left the country also indicates that they continued their money laundering activities.” Opp. at 16. The Complaint alleges generally

1 **D. The Verification Accompanying the Complaint Is Deficient.**

2 Finally, despite the government’s lengthy protests to the contrary, the purported verification of
 3 the Complaint is insufficient. The government argues that the verification is not deficient because it
 4 states the agent “believes” the facts alleged in the Complaint are true, and belief is “logically necessary
 5 to claim or attest the fact is true.” Opp. at 6. While the government’s dictionary definition may be
 6 accurate, it proves the point: belief and knowledge are not the same. The agent does not attest that the
 7 facts are true, or that she knows them to be true; she merely opines that she believes they are. There is
 8 no indication the agent has reviewed records, traced funds, or done any other work to be able to attest
 9 that she knows that the (few) facts the government alleges in its Complaint are, indeed, true.

10 The government claims that the cases it cites “actually use or reference ‘belief’” in approving the
 11 relevant verifications in those cases. *See* Opp. at 6 (citing *Schroeder v. McDonald*, 55 F.3d 454, 460
 12 n.10 (9th Cir. 1995) and *United States v. 8 Gilcrease Lane, Quincy, Fla.* 32351, 587 F. Supp. 2d 133,
 13 139 (D.D.C. 2008)). This is incorrect; neither case uses “belief” to approve the verification. To the
 14 contrary, each of the government’s own parenthetical citations are to cases in which the agent attests that
 15 the allegations are *known* to be true. *See, e.g., Schroeder*, 55 F.3d at 461 (noting that the “verified
 16 complaint” attested “personal knowledge of admissible evidence” and was “not based purely on . . .
 17 belief”); *8 Gilcrease Lane*, 587 F. Supp. 2d at 139. Whether belief is logically necessary to knowledge,
 18 believing is plainly different from knowing. The verification carefully refuses to provide an attestation
 19 based on knowledge, intentionally diverting from the well-accepted attestation based on statutorily
 20 prescribed language of 28 U.S.C. § 1746. It is thus deficient.

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 25 that Dr. Apte and Dr. Richman moved money between personal accounts, both bank and brokerage
 26 accounts, in 2020. Compl. ¶ 24. Crucially, none of those transactions involve funds that were invested
 27 in the Florida Condominiums—the defendant properties that the government now seeks to forfeit.
 28 Moreover, even by the government’s own terms, these allegations fail to adequately plead money
 laundering. The transactions bear none of the government’s supposed “hallmarks” of money laundering
 and the Complaint fails to allege that the transactions were for the purpose of concealing the source of
 the funds at issue.

1 **IV. CONCLUSION**

2 The government's Complaint falls far short of the heightened pleading requirements demanded
3 to maintain a civil forfeiture action. It should be dismissed.

4

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Respectfully submitted,

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